



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2013-0061]

Unmanned Aircraft System Test Site Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability; Request for Comments

SUMMARY: On February 14, 2012, Congress mandated that the FAA, coordinating with the National Aeronautics and Space Administration and the Department of Defense, develop a test site program for the integration of unmanned aircraft systems in to the National Airspace System. The overall purpose of this test site program is to develop a body of data and operational experiences to inform integration and the safe operation of these aircraft in the National Airspace System. This proposed rule announces the process by which the FAA will select the test sites for the program and also solicits comments on the FAA's proposed approach for addressing the privacy questions raised by the public and Congress with regard to the operation of unmanned aircraft systems within the test site program.

DATES: The FAA values the input of the public and requests comment regarding the privacy approach discussed in this Notice. Please send your comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION].

Once the public has had a chance to review the proposed privacy policy requirements to be levied on the Unmanned Aircraft Systems Test Site operators, but prior to the close of the comment period, the FAA will participate in a webinar to solicit comments from the public and

interested stakeholders regarding the proposed privacy approach for the unmanned aircraft systems test site program. The FAA will publish a notice providing details (including the date and time) for the engagement session sufficiently in advance of the meeting to facilitate broad participation.

ADDRESSES: You may send comments identified by Docket No: FAA-2013-0061 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at (202) 493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning the test site program, contact Elizabeth Soltys, Unmanned Aircraft Systems Integration Office, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; e-mail: 9-ACT-UASTSS@faa.gov.

For questions concerning the FAA's proposed approach for addressing potential UAS privacy concerns, as set out herein, contact Gregory C. Carter, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, DC 20591; e-mail: 9-AGC-UASPrivacy@faa.gov

BACKGROUND:

On February 14, 2012, the President signed the FAA Modernization and Reform Act, Public Law 112-95 (FMRA) into law. The statute contains a number of provisions pertaining to integration of unmanned aircraft systems (UAS) into the National Airspace System (NAS). To assist the agency in integrating UAS, section 332(c) of FMRA directs the FAA, in coordination with the National Aeronautics and Space Administration (NASA) and the Department of Defense (DoD), to develop a UAS test site program for purposes of gathering safety and technical information relevant to the safe and efficient integration of UAS into the NAS. Under the test site program, the FAA will select six test ranges, taking into consideration factors such as

geographic and climatic diversity, as well as the location of necessary ground infrastructure to support the sites, and research needs.

The FAA has developed the UAS test site program with the input of the public. The FAA began an outreach effort to gather input on the criteria and processes the FAA should use to select the test sites. In March 2012, the FAA posted a Request for Comments (RFC) in the Federal Register [Docket No. FAA-2012-0252] and in April 2012, the FAA hosted two public webinars to interact directly with the public. This outreach effort informed the agency in developing its plan for designating the sites.

Based on the feedback received through this outreach effort, the FAA is using its Acquisition Management System (AMS) to solicit applications from entities interested in operating a UAS test site. This system is the common process the FAA uses to obtain information, evaluate interested parties, and select successful providers for procurement matters. Although no federal funds will be distributed to the selected test site operators for the operation of these test sites (and selection of sites is not a procurement action), the FAA has determined that using this well-established system and process will ensure fair consideration of all applications and rigorous oversight of the selection process.

For individuals interested in submitting an application to operate a UAS test site, the FAA has published a Screening Information Request (SIR), which is also known as a Request for Proposals, or RFP, in other federal agencies. The SIR (and amendments, if any) is available on the FAA Contracting Opportunities website (<http://faaco.faa.gov>). Additional information about this SIR process and criteria for selecting the six test sites is contained within the SIR document itself. In order to be considered for selection, completed responses must be submitted via the FAA Contracting Opportunities Website by the dates set out in the SIR.

Once the FAA has conducted and completed its consideration of the submissions, and the Administrator has issued an Order designating each successful applicant as a test site operator, each operator will be required to enter into an Other Transaction Agreement (OTA) with the FAA. Each OTA will set out the legally binding terms and conditions under which the entity will operate the UAS Test Site. The draft OTA is available for review via the FAA Contracting Opportunities website listed above. Before OTA parameters and reporting requirements are finalized, FAA will consider comments submitted as a result of this Federal Register Notice.

While the expanded use of UAS presents great opportunities, it also presents significant challenges as UAS are inherently different from manned aircraft. The UAS test site program will help the FAA gain a better understanding of operational issues, such as training requirements, operational specifications, and technology considerations, which are primary areas of concern with regard to our chief mission, which is ensuring the safety and efficiency of the entire aviation system. The FAA also acknowledges that the integration of UAS in domestic airspace raises privacy issues, which the FAA intends to address through engagement and collaboration with the public. To address privacy concerns relating to the operation of the test site program, the FAA intends to include in each final OTA privacy requirements applicable to all operations at a test site. This notice is specifically requesting comments on those potential privacy considerations, associated reporting requirements, and how the FAA can help ensure privacy considerations are addressed through mechanisms put in place as a result of the OTAs.

The proposed privacy requirements set forth in Article three of the DRAFT OTA are as follows:

- (1) The Site Operator must ensure that there are privacy policies governing all activities conducted under the OTA, including the operation and relevant

activities of the UASs authorized by the Site Operator. Such privacy policies must be available publically, and the Site Operator must have a mechanism to receive and consider comments on its privacy policies. In addition, these policies should be informed by Fair Information Practice Principles. The privacy policies should be updated as necessary to remain operationally current and effective. The Site Operator must ensure the requirements of this paragraph are applied to all operations conducted under the OTA.

- (2) The Site Operator and its team members are required to operate in accordance with Federal, state, and other laws regarding the protection of an individual's right to privacy. Should criminal or civil charges be filed by the U.S. Department of Justice or a state's law enforcement authority over a potential violation of such laws, the FAA may take appropriate action, including suspending or modifying the relevant operational authority (e.g., Certificate of Operation, or OTA), until the proceedings are completed. If the proceedings demonstrate the operation was in violation of the law, the FAA may terminate the relevant operational authority.
- (3) If over the lifetime of this Agreement, any legislation or regulation, which may have an impact on UAS or to the privacy interests of entities affected by any operation of any UAS operating at the Test Site, is enacted or otherwise effectuated, such legislation or regulation will be applicable to the OTA and the FAA may update or amend the OTA to reflect these changes.

- (4) Transmission of data from the Site Operator to the FAA or its designee must only include those data listed in Appendix B to the OTA. (Appendix B to the OTA is available as part of the SIR at <http://faaco.faa.gov>.)

The FAA anticipates that test site operator privacy practices as discussed in their privacy policies will help inform the dialogue among policymakers, privacy advocates, and the industry regarding broader questions concerning the use of UAS technologies. The privacy requirements proposed here are specifically designed for the operation of the UAS Test Sites. They are not intended to pre-determine the long-term policy and regulatory framework under which commercial UASs would operate. Rather, they aim to assure maximum transparency of privacy policies associated with UAS test site operations in order to engage all stakeholders in discussion about which privacy issues are raised by UAS operations and how law, public policy, and the industry practices should respond to those issues in the long run.

Issued in Washington, D.C. on February 14, 2013.

KATHRYN B. THOMSON

Chief Counsel, Federal Aviation Administration